

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

SEATTLE YACHT CLUB,

Appellant,

v.

JEFFERSON COUNTY and PORT LUDLOW
BAY COMMITTEE, INC.; POPE
RESOURCES, INC.; ROBERT W.
BECKMAN and RONALD E. TOWERY,

Respondent.

SHB
PCRB No. 89-45

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of the denial of a shoreline substantial development permit for a moorage facility, came on for hearing on February 5, 1990 in Port Townsend, Washington, before the Shorelines Hearings Board, Wick Dufford, presiding; Judith A. Bendor, chair; Harold S. Zimmerman, Nancy Burnett and Gordon Crandall.

Five days of hearings were conducted. The proceedings were reported by Betty J. Lancaster and Donna K. Woods.

Appellant was represented by Peter L. Buck and Keith E. Moxon, attorneys at law. Respondent Jefferson County was represented by Mark Huth, Deputy Prosecuting Attorney. The Intervenor-respondents were represented by Michael W. Gendler, attorney at law.

Witnesses were sworn and testified. Exhibits were admitted and examined. From the testimony heard and exhibits examined, the Board makes the following

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
SHB No. 89-45

(1)

1 FINDINGS OF FACT

2 I

3 Port Ludlow Bay lies on the east side of the Olympic Peninsula
4 just north of the entrance to Hood Canal. The bay is oriented roughly
5 east-west and extends 3.5 miles inland from Admiralty Inlet to the
6 mouth of Ludlow Creek. The surface area is approximately 2.2 square
7 miles. The depth throughout most of its length is between 50 and 60
8 feet. The bay is one of a few protected stopping places for boaters
9 between Seattle and the Straits of Juan de Fuca.

10 II

11 Most of the land surrounding Port Ludlow Bay was once the
12 property of Pope and Talbot, Inc. Four years ago Pope Resources was
13 created as a separate entity to control and manage land resources.

14 On the north shore of the bay is a large Pope development which
15 was begun over 20 years ago. It includes a resort at the east end of
16 the bay with sleeping accommodations, meeting rooms, tennis courts,
17 swimming pool and restaurant. Next to the resort and associated with
18 it is a large marina (Admiralty Resort Marina) with spaces for 300
19 boats.

20 West of the resort and marina is a shoreline area devoted to
21 condominiums. The adjacent uplands are in less intensive residential
22 development. At the far west end of the north side is a commercial
23 area, used now as a log dump. Nearby is an area to be developed as a
24 commercial center to serve the bay's residential community.

Presently, the south side of the bay is given over to low density single-family residential development or is undeveloped. Pope is in the throes of changing that. On the upland is a golf course which is bordered by residential properties. Nearer to the water a new residential area called Bayview Village, which includes cluster housing, is under development. Along the south shore, approval has been obtained for Inner Harbor Village, a mixture of single-family and multi-family structures, which includes a sizable community center building. 800 new residential units are being developed on the south side by Pope Resources. Sewer and water systems have been extended to serve the area.

III

The inner harbor, around which Inner Harbor Village is being developed, is a lagoon within the larger Port Ludlow Bay, lying behind two small islands. Its shores have, until now, been undeveloped, but its waters have long been a popular area for boaters to anchor in. Development plans for the area are being pursued following the collapse of efforts to turn the inner harbor into a park.

IV

The east shore of the inner harbor is formed in part by a small peninsula which juts into Port Ludlow Bay from the south. The waterward end of this peninsula lies opposite the condominiums and marina on the north side of the bay.

On this peninsula now are several single family residences, some of which are served by individual boat docks. There is also a 270 foot floating dock connected to two lots owned by the Meydenbauer Bay Yacht Club, of Bellevue, Washington. This club, since 1970, has used its Port Ludlow Bay property as an outstation--transient moorage for members when in the vicinity. Meydenbauer's uplands contain an outdoor cooking and dining area, restrooms and storage facilities.

V

The three lots immediately to the east of the Meydenbauer Bay Yacht Club property are, at this time, undeveloped. They have been purchased by the Seattle Yacht Club, which is headquartered on Portage Bay in Seattle. The Seattle Yacht Club desires to create another outstation on the site for its members. This proposal is the subject of the instant appeal.

VI

Port Ludlow Bay is a popular spot with boaters, both as a destination and as a stopover. It is most heavily used on three summer weekends--Memorial Day, the Fourth of July and Labor Day. On these weekends, there may be over 500 boats in the bay. The 300-space marina will be full. More than 150 boats may be anchored out. The Meydenbauer dock may contain upwards of 50 boats and various single family residential piers may be occupied.

This situation is expressive of the trend of increasing boater

1 usage of the bay in recent years. There is no evidence to suggest
2 that this trend will not continue.

3 VII

4 The Seattle Yacht Club's proposed outstation moorage facility on
5 the south shore of Port Ludlow Bay would involve construction of a
6 multi-fingered dock, a clubhouse, restrooms, and a porta-potty dump
7 station. A holding tank pump-out facility would be located on the
8 outboard end of one of the dock fingers.

9 The dock would be constructed of floats fixed to piles. Typical
10 dock width would be 6 feet. The dock would reach waterward a maximum
11 of 150 feet from the mean lower low water (MLLW) line, providing along
12 its four fingers approximately 800 linear feet of moorage space. A 40
13 foot ramp would connect the dock to an upland walkway and deck.
14 Electric power and waterlines would be provided to the dock.

15 The toilets and the porta-potty dump would be located on the deck
16 at the end of the ramp (about 18 feet above MLLW), close to the
17 moorages. The clubhouse would be further upgrade (about 40 feet above
18 MLLW) near South Bay Lane at the rear of the property. Six paved
19 off-road parking stalls would be placed alongside the building.

20 The facilities proposed could be connected to the regional sewer
21 and water systems.

22 VIII

23 The three lots which comprise the site of the Seattle Yacht
24

1 Club's proposal contain approximately 1.72 acres, with about 255
2 linear feet of waterfront. The longest dimension inland from the
3 shore is about 347 feet.

4 The land surface rises sharply from the water's edge and then
5 slopes more gently upward as the distance from the shore increases.
6 The majority of the site lies between 30 and 45 feet above MLLW. The
7 soils were formed in glacial till and overlie basalt bedrock. The
8 upper 2-4 inches are composed of decomposed vegetation. The living
9 vegetation on the site is thick, with numerous large conifers and
10 significant undergrowth. Trees and shrubs overhang the shoreline.

11 The bay bottom in front of the lots is rocky and slopes
12 moderately to minus 30 feet MLLW.

13 IX

14 The westerly three finger piers would each be 110 feet in length
15 lying between minus 5 and minus 25 feet MLLW. The easterly finger
16 would be shorter, about 60 feet in length, terminating short of minus
17 20 feet MLLW. The array of finger piers is 20 feet from the lateral
18 boundaries of the property on both east and west. The total
19 horizontal distance covered by the entire dock structure across the
20 front of the property is 215 feet.

21 X

22 Robert W. Beckman owns the property immediately adjacent to the
23 east of the Seattle Yacht Club lots. He has resided there with his
24

1 family since the fall of 1987. They have a single family residence
2 which commands a panoramic view of the bay to the west, north and
3 east. In front of his home, he maintains his own pier and float. The
4 most easterly finger pier of the Seattle Yacht Club proposal would
5 come within 25 feet of Beckman's float.

6 XI

7 Adjacent to the Meydenbauer Bay Yacht Club property on the west
8 is a parcel owned by Ronald E. Towery. The Towerys do not presently
9 reside on the property, but apparently intend to do so in the future.
10 Currently they visit the property often on weekends. The property has
11 a residence and a small dock. The Towerys purchased in April 1989.

12 XII

13 The Seattle Yacht Club made formal application to Jefferson
14 County for a shoreline substantial development permit in July of
15 1987. The proposed outstation is designed to provided transient
16 moorage for 20 boats. Use of the moorage is to be limited to Seattle
17 Yacht Club members.

18 In August of 1988, a draft environmental impact statement on the
19 proposal was published and circulated. A final environmental impact
20 statement was produced in February 1989.

21 On April 19, 1989, the Jefferson County Shoreline Advisory
22 Commission held a public hearing on the proposal. The matter was
23 discussed again by the Advisory Commission on May 31, 1989. At that
24

1 meeting the commission voted to recommend denial of the project to the
2 County Commissioners.

3 On June 12, 1989 the County Commissioners considered the proposal
4 and decided to deny the Seattle Yacht Club's application for a
5 shoreline substantial development permit. An appeal to this Board by
6 the Seattle Yacht Club followed, being assigned docket no. SHB 89-45.

7 XIII

8 In connection with consideration of the proposal at the local
9 level, the Jefferson County Planning staff developed an extensive list
10 of conditions which might be imposed if the project were approved.
11 The county staff, however, made no recommendation on the project.

12 Nonetheless, the Seattle Yacht Club has indicated a willingness
13 to abide by the conditions proposed by the county staff. In
14 conducting our review, we have evaluated the project as though these
15 conditions were incorporated into the proposal.

16 The proposed conditions are the following:

- 17 1. The proponent shall conduct baseline and on-going
18 water quality monitoring to detect the presence, if
19 any, of fecal coliform in the marine waters
20 adjacent to the proposal site. This monitoring may
21 be conducted in conjunction with Shoreline
22 Substantial Development Permit No. 88-0016. The
23 water quality monitoring program shall be reviewed
24 and approved by Jefferson County prior to the
25 beginning of construction. The results of baseline
26 and on-going monitoring shall be made available to
27 Jefferson County.
2. The Jefferson County Board of Commissioners may
review the results of the water quality monitoring
at any time after the issuance of the permit. If

1 there is substantial evidence that operation of the
2 marina has contributed to violations of water
3 quality standards, permit conditions may be changed
4 or new conditions may be added to correct water
5 quality degradation associated with the marina, or
6 the permit to use the facility may be rescinded
7 pending submission by the proponent of an
8 acceptable plan to remedy said violation.

- 9
- 10 3. All boats with Type III marine sanitation devices
11 shall be required to dock at the pump-out and use
12 the pump-out facility upon arriving at the
13 outstation. Boats with macerator/chlorinator
14 systems shall be prohibited from discharging
15 treated sewage into the waters of Ludlow Bay and
16 the Inner Harbor.
- 17 4. No mooring shall be permitted at the pump-out
18 facility except for the purpose of using the
19 facility.
- 20 5. A sign indicating the following shall be placed at
21 the pump-out:
- 22 a. No moorage shall be permitted at the pump-out
23 except while using the pump-out facility.
- 24 b. Pump-out facility operating instructions.
- 25 c. Notice that all boats arriving at the marina
26 are required to use the pump-out facility.
- 27 d. Notice that the permit to operate the
facility may be rescinded by the Jefferson
County Board of Commissioners if there is
substantial evidence that operation of the
marina has contributed to water quality
violations.
6. The pump-out facility shall be made available to
members of the neighboring Meydenbauer Yacht Club
and the general public. A reasonable charge may be
assessed for use of the facility by Meydenbauer
Yacht Club members and the general public.
7. A construction drainage control plan shall be
submitted to the Jefferson County Public Works
Department and approved prior to construction.

- 1 8. *Trees and other vegetation seaward of the 35-foot*
2 *contour line as depicted on the site plan shall not*
3 *be removed with the exception of vegetation which*
4 *must be removed to allow for constuction of*
5 *permitted facilities.*
- 6 9. *All areas disturbed in the process of construction*
7 *shall be revegetated as soon as practicable upon*
8 *completion of construction.*
- 9 10. *A site obscuring buffer of conifers, rhododendrons,*
10 *and other native shrubs shall be maintained between*
11 *the proposal site and adjoining rights-of-way and*
12 *properties.*
- 13 11. *All exterior lighting shall be beamed, hooded, or*
14 *directed so as not to cause glare on adjoining*
15 *properties or marine waters.*
- 16 12. *Exterior building materials shall be shingle or*
17 *wood siding. Paint colors shall be earth-tone.*
18 *Roof materials shall be shake, shingle, or*
19 *earth-tone concrete tile.*
- 20 13. *No more than 20 boats shall be permitted to moor at*
21 *the marina at any one time. No rafting of boats*
22 *shall be permitted.*
- 23 14. *The dock shall be marked with aids to navigation as*
24 *required by the U.S. Coast Guard.*
- 25 15. *Garbage dumpsters shall be placed on the upland*
26 *deck. The proponent shall contract for garbage*
27 *removal service.*
- 28 16. *No parking shall be permitted on South Bay Lane.*
29 *Signs to this effect shall be placed on South Bay*
30 *Lane.*
- 31 17. *Trailers, campers, or recreational vehicles which*
32 *are parked on-site shall not be used for overnight*
33 *occupancy.*
- 34 18. *No upland overnight camping shall be permitted*
35 *on-site.*

- 1 19. Outdoor use of radios, stereo tape, compact disk
2 players, and the like may only be allowed between
3 10:00 a.m. and 8:00 p.m.
- 4 20. The adequacy of water supply for fire fighting and
5 access provisions for fire and emergency vehicles
6 shall be submitted to the chief of Fire Protection
7 District #3 and approved prior to construction.
- 8 21. The toilet, showers, and porta-potty dump station
9 shall be set back a minimum of thirty feet from the
10 ordinary high water mark.
- 11 22. The clubhouse shall not exceed 3,000 square feet.
- 12 23. Placement of an underground sewage holding tank
13 adjacent to the clubhouse may be allowed as a
14 permit revision upon approval by the Jefferson
15 Conty Health Department if:
 - 16 a. It is determined by the Health Department
17 that the volume of sewage from the pump-out
18 facility has exceeded the designed capacity
19 of the on-site sewage disposal system, and
 - 20 b. The proponents are unable to obtain hook-ups
21 to the Ludlow Utilities sewer system.
- 22 24. No discharge of sewage into the water of Ludlow Bay
23 and the Inner Harbor shall be permitted.
- 24 25. The proponent shall hook up the Ludlow Utilites
25 sewer system, if such hook-up becomes available.
- 26 26. The proponent shall hire a property manager whose
27 responsibility it shall be to enforce relevant
shorelines permit conditions and club rules. The
property manager shall reside within five miles of
the proposal site. The phone number of the
property manager shall be placed in a conspicuous
location at the site and be provided to the
Jefferson County Planning and Building Department
and the Jefferson County Sheriff's Department.

XIV

After the appeal to this Board by the Yacht Club, the Port Ludlow Bay Committee, Pope Resources, Robert Beckman and Ronald Towery intervened in opposition to the project.

The Port Ludlow Bay Committee is an organization of residents of the vicinity devoted to preserving the environment, particularly the water quality of the bay.

Our discussion falls under two general headings: "Water Quality" and "Land Use Compatibility."

XV

WATER QUALITY

In comparison with Puget Sound embayments, Port Ludlow Bay can be described as well-flushed. Generally the water quality there is high. However, in the past, elevated levels of fecal coliform were found in the vicinity of the Port Ludlow sewage treatment plant outfall and near the resort's marina.

Recently Pope has upgraded the sewage treatment plant. The outfall discharges to Admiralty Inlet and has been placed well north of the mouth of the bay. But, the problem of fecal coliform loading in the bay from recreational boats remains.

There is a correlation between levels of fecal coliform and the numbers of boats in the bay. On peak summer boating weekends, the relevant water quality standards (Class AA) for fecal coliform may be exceeded.

XVI

Seattle Yacht Club members have been bringing their boats to Port Ludlow Bay for many years. With the increase of boaters generally, there has been a growth in use of the area by club members. Currently 15 to 20 of the club's boats may be in the bay on some weekends during boating season.

Until recently the club leased space for five or six boats from the Admiralty Resort Marina. On peak weekends, this has meant that numerous club members have been anchoring their boats out in the bay.

XVII

The resort's marina has a single pump-out facility for its entire 300 boat capacity. The testimony was that it is little used. The shoreside toilet facilities at the marina have in the past, been poorly maintained and are, in any event, inadequate to handle the large population of boaters who try to use them.

By virtue of a recent agreement with the Port Ludlow Bay Committee, Pope Resources has agreed not to seek further expansion of the marina for 10 years.

XVIII

The Seattle Yacht Club asserts that the construction and use of its proposed outstation will have a positive effect on water quality. The premise is that boats moored near convenient land-based toilet facilities will contribute less pollution than those at anchor.

1 While we agree that this is probably true, we do not think that
2 the existence of the yacht club's facility will necessarily reduce the
3 number of boats at anchor.

4 The bay is now crowded on the peak weekends, but there is nothing
5 in the record to show that it has no unused capacity. Indeed, if the
6 log booms near the west end of the bay were ever discontinued,
7 substantial additional anchorage would become available. We think it
8 likely that boater usage of the bay, including peak weekends, will
9 continue to increase whether the yacht club's outstation is built or
10 not.

11 XIX

12 Much testimony was heard about the bad habits of boaters in
13 regard to waste disposal, the problems of various kinds of marine
14 sanitation devices, and the likelihood that any pump-out station will
15 be used. There are, indeed, many variables in trying to determine the
16 effectiveness of any strategy for curbing pollution from boats.

17 Despite the shortcomings of current efforts, we believe that the
18 facilities to be installed at the proposed outstation must be viewed
19 as a plus. The existence of well-maintained onshore toilet facilities
20 near the dock is likely to reduce the volume of on-boat wastes which
21 must be disposed of.

22 Moreover, the availability of convenient pump-out facilities for
23 holding tanks is analogous to the availability of seat belts in cars.

1 Just because everyone doesn't use them doesn't mean they are not a
2 good idea. Making the pump-out at the moorage available to the public
3 at large provide a service for the bay as a whole.

4 The same sort of observation can be made about the suggested
5 condition disallowing boats from discharging sewage into the bay. The
6 existence of enforcement problems, in this context, does not mean
7 there will be no compliance at all.^{1/}

8 XX

9 In sum, the up to 20 boats to be moored at the outstation will
10 probably contribute a lesser volume of pollutants than they would if
11 they were anchored out. However, this must be viewed simply as a
12 modest expansion of shoreside facilities in the context of an overall
13 pattern of increased boater usage of the bay which will occur in any
14 event. For the bay as a whole, the ameliorating effect of the
15 outstation, on peak weekends or otherwise, is not likely to be
16 substantial. On the other hand, the project, in itself, is not likely
17
18
19

20 ^{1/} The condition requiring the club to hire a property manager
21 charged with enforcement duties should help substantially in obtaining
22 compliance with conditions relating to dockside behavior.
23
24
25

1 to significantly degrade the overall water quality of the bay.^{2/}

2 XXI

3 Our findings relating to probable water quality impacts are for
4 the project as limited by the County's suggested conditions. However,
5 we find that Condition 3, as presently worded, is incomplete and
6 impractical. It would lead to unnecessary trips to the pump-out,
7 thus, perhaps undermining its usefulness. Boats with holding tanks,
8 having traveled to Port Ludlow Bay directly from Seattle, are not
9 likely to need to visit the pumpout. Furthermore, all boats, not just
10 those with macerator/chlorinator systems should be prohibited from
11 discharging into the bay. Condition 3 should be modified to read as
12 follows:

13 *All boats with Type III marine sanitation devices*
14 *shall be required to use the pump-out whenever they are*
15 *at the outstation with full or nearly full holding*
16 *tanks. All boats, including those with*
17 *macerator/chlorinator systems, shall be prohibited from*
18 *discharging sewage, treated or untreated, into the*
19 *waters of Ludlow Bay and the Inner Harbor.*

20
21 ^{2/} The yacht club has agreed to test this prediction by acquiring
22 real data and living by the consequences, through a condition which
23 calls for rescinding the permit if there is substantial evidence the
24 facility is contributing to water quality violations.

1 In addition, we think that whatever pollution control benefits
2 may attend making the pump-out available to members of the public
3 would be offset by charging a fee for the service. In addition, a sign
4 should be posted on the facility to alert the public of the
5 availability of the pump-out. Condition 6 should be modified to read:

6 *The pump-out facility shall be made available to*
7 *members of the neighboring Meydenbauer Yacht Club and*
8 *the general public. A sign advising of the public*
9 *availability of the pump-out shall be posted on the*
10 *outboard end of the dock. The size, contents and*
11 *precise location of the sign shall be subject to County*
12 *approval.*

13 XXII

14 LAND USE COMPATIBILITY

15 The Seattle Yacht Club already has in operation a number of other
16 outstations in waters of Washington State and British Columbia. Two
17 of these, at Henry Island in the San Juans and at Port Madison on
18 Bainbridge Island, include facilities similar to those planned for
19 Port Ludlow Bay and are in developed residential settings. The club's
20 experience at these locations has been one of successful integration
21 into the residential environments.

22 XXIII

23 The proposed outstation is not a marina as that term is commonly
24 used. It has no commercial dimension. It is not a locale for
25 purchasing and taking on supplies. It is neither a fueling dock, nor
26 a repair facility. No boat launching will occur on site. No

1 commercial boats will tie up there. No one will live permanently
2 aboard a boat there.

3 The outstation is only a site for transient moorage with
4 supporting upland facilities. Except for the short-term nature of the
5 visits, the type of use is indistinguishable from that of a
6 residential dock. The difference is in the size of the dock and the
7 number of boats which may be there at one time.

8 In this latter regard, we note that the outstation is only rarely
9 likely to be full--on a few summer weekends when the bay otherwise is
10 teeming with boats. Most of the time the facility will be well below
11 its capacity. During the off-season there will be little use.

12 XXIV

13 The upland development at the outstation will readily fit into
14 the residential neighborhood. The clubhouse, limited to 3,000 square
15 feet and located at the back of the property, will approximate the
16 appearance of a large residence. The building materials to be used
17 are intended to blend the clubhouse and the other structures on site
18 into the natural setting.

19 Except as necessary to build the restroom deck and walkway,
20 vegetation seaward of the 35-foot contour will not be removed. This
21 means that most of the natural growth on the slope up from the water's
22 edge will remain, including a number of large trees. The appearance
23 from the water or from across the bay will still be of densely
24 vegetated upland.

1 Further, site obscuring buffer screens of confers, rhododendrons
2 and other native shrubs are to be maintained between the site and
3 adjoining properties and rights-of-way.

4 Noise limitations will render the outstation property at least as
5 quiet as the adjacent residential properties during the late evening,
6 night and early morning hours. No upland overnight camping will be
7 permitted on site.

8 XXV

9 The over water development at the outstation will occur in a bay
10 which is already a significant center for boating recreation. The
11 reasonable expectations of anyone moving to Port Ludlow Bay must
12 include the understanding that boats--lots of them--are a part of the
13 scene, a fact of life.

14 The nearshore placement of new moorage for up to 20 boats does
15 not, we find, constitute an incompatible intrusion on the aesthetics
16 of the bay.

17 At present the boats tying up at the Meydenbauer Bay Yacht Club
18 next door, engage in extensive rafting of their boats on peak
19 weekends, so that the rows of watercraft extend laterally from their
20 dock well over onto the property of the Seattle Yacht Club. The
21 Seattle Yacht Club's project will, to some degree, limit the rafting
22 its neighbors can engage in. But, in terms of the visual effect, the
23 change will not be a radical one at times when both facilities are
24 full.

1 A suggested permit condition would prohibit the Seattle Yacht
2 Club from rafting.

3 XXVI

4 The larger neighborhood on the south side of the bay is on the
5 verge of a significant intensification of development. The proposed
6 outstation will not intrude upon a bucolic rural preserve, but rather
7 upon an area undergoing rapid land-based growth, including
8 multi-family housing and supporting community facilities. Sewers and
9 water supplies linked with urban utilities, have been extended to the
10 area.

11 Boat moorage, as a use, is in general compatible with residential
12 use of uplands. In light of the upland development in progress, the
13 modest intensification of boat moorage represented by the Seattle
14 Yacht Club proposal, tied to urban utilities, does not appear out of
15 harmony with the character of the neighborhood from a land use
16 perspective.

17 XXVII

18 The site itself is eminently well suited to the proposed use and
19 the facilities can be installed with minimal environment damage.

20 The water depths are appropriate for moorage and the project can
21 be constructed with no dredging or filling.

22 There are no significant shellfish resources on the property
23 which might be disturbed. Recreational shellfish beds do exist around
24

1 the east corner of the small peninsula, but there is no evidence that
2 the new moorage will adversely affect them. Oysters from the area are
3 taken mainly in the winter when use of the Seattle Yacht Club facility
4 will be at its lowest.

5 XXVIII

6 The Port Ludlow Bay Committee is concerned with cumulative and
7 precedential effects of the Yacht Club's project on the south side of
8 the bay.

9 We find that approval of this project will not, in all likelihood
10 lead to the approval of others like it.

11 In the first place, Pope is bound by an agreement with the
12 Protect Port Ludlow Bay Committee to exclude docks from the inner
13 Harbor Village development, with the exception of three single family
14 residential lots. Outside of the inner harbor, we were not apprised
15 of suitable sites for another development of the type proposed on the
16 south side.

17 Moreover, new restrictions on docks have been adopted as part of
18 the Jefferson County Shoreline Master Program since the Yacht Club's
19 application was filed. Under the new rules, a 60 foot length limit
20 applies.

21 XXIX

22 The Yacht Club's immediate residential neighbors, Beckmans and
23 Towerys, bought into a situation where they should, upon reasonable
24

1 inquiry, have been aware of the outstation plans. Under the
2 circumstances, they cannot be said to have acted in reliance on those
3 plans never being realized.

4 Significantly neither neighbor objects to the plans made for
5 development of the Yacht Club's uplands. Their concerns are focused
6 on the dock. For the Towerys, the development will lie behind a
7 foreground already dominated by the Meydenbauer Bay dock, adding a
8 modest additional assemblage of boats in the middle distance. As for
9 the Beckman's, while some of the boats moored next door will be close
10 at hand, most of their panoramic view will remain unaffected. Neither
11 the Towerys', nor the Beckmans' views will be dramatically impaired.

12 We find that the project will not create conditions substantially
13 at odds with what the Beckmans and Towerys should have expected when
14 they purchased.

15 XXX

16 Any Conclusion of Law which is deemed a Finding of Fact is hereby
17 adopted as such.

18 From these Findings of Fact, the Board reaches the following

19 CONCLUSIONS OF LAW

20 I

21 We review substantial development permits for consistency with
22 the applicable master program and the provisions of the underlying
23 statute, chapter 90.58 RCW, the Shoreline Management Act of 1971. RCW
24

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
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1 90.58.140(2)(b). Our review is de novo through adjudicative
2 proceedings as provided for in the Administrative Procedure Act. San
3 Juan County v. Department of Natural Resources, 28 Wn.App. 796, 626
4 P.2d 995 (1981).

5 II

6 The applicants have a vested right to have their proposal
7 reviewed under the local master program as it existed at the time they
8 completed the filing of their application. Talbot v. Gray, 11 Wn.App.
9 807, 525 P.2d 801 (1974). In the instant case this calls into play
10 the version of the Jefferson County Shoreline Master Program adopted
11 in 1983. A revision to the program was adopted March 7, 1989. See
12 WAC 173-19-240.

13 III

14 The Jefferson County Shoreline Master Program divides Port Ludlow
15 Bay into two different environments. The north side is designated
16 "urban." The south side is designated "suburban."

17 The proposal falls under the category of "docks, piers and
18 floats." However, under Section 5.60(5), a jointly used dock "that
19 regularly serves more than four boats" must comply with the program's
20 performance standards for "marinas."

21 The use matrix of the master program (graph between pages 26 and
22 27) shows marinas as "secondary uses" in suburban environments.

IV

Pursuant to Section 4.202, secondary uses must, among other criteria, be consistent with the following:

The proposed project will not cause unnecessary adverse effects on the environment or other properties and will be compatible with other permitted uses in the area.

We view the concept of compatibility broadly, consistent with the provisions of RCW 90.58.340 which requires use policy on lands adjacent to the 200 foot shoreline strip to be consistent with the policy of the shorelines program. See generally, Merkel v. Port of Brownsville, 8 Wn. App. 844, 509 P.2d 390 (1973).

Under the facts, we conclude that the proposed outstation meets the requirements of Section 4.202.

V

Section 5.110 contains the master program's policies and performance standards for marinas. In general these requirements call for marinas to be located in areas where boat usage is high, where flushing action is good, where damages to fish and shellfish will not be great, and where aesthetic compatibility with adjacent areas is achieved. One specific performance (No. 5) standard is directed to protection of immediate neighbors as follows:

Marinas shall be located, designed, constructed, and operated so as to not unnecessarily interfere with the rights of adjacent property owners, nor interfere with adjacent water uses.

1 Under the facts, we conclude that the proposed outstation meets
2 the policies and performance standards for marinas.

3 VI

4 We have reviewed the other master program provisions cited to
5 us^{1/} and conclude that consistency with them has been shown.

6 VII

7 All of master program provisions relied upon to support denial
8 relate to the overriding concerns for environmental effects (mainly
9 water quality) and land use compatibility.

10 Of these two, we found the latter the most troubling. In
11 considering the matter, we were guided by the policy for suburban
12 environments set forth in master program Section 4.104. That policy
13 is:

14 *To provide permanent residential and recreational areas*
15 *outside of urban areas, so long as development of these*
16 *areas provides adequate facilities for sewage disposal,*
water supply, open space, and the like without severe
degradation to the lifestyle sought.

17 Initially this policy places residential and recreational
18 developments on an equal footing in suburban areas. The critical
19 question is whether the proposed outstation will result in "severe
20 degradation" to the lifestyle sought."

21
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24 ^{1/} Section 1.20(5), and 4.101(Policy).

We have interpreted this terminology to mean that the proposed use must not seriously disrupt the existing quality of life in the neighborhood. Our view of the facts has led us to conclude that in this specific locale--in the midst of a bay highly prized and much used for recreational boating--the modest boat moorage facility proposed by the Seattle Yacht Club is not out of harmony with the pre-existing lifestyle. It certainly does not result in "severe degradation" of that lifestyle. See generally, Brachvogel v. Mason County, SHB No. 45 (1973).

VIII

We further conclude that the proposed development conforms with the policies of the Shoreline Management Act (SMA) including (beyond the line of extreme low tide) those for shorelines of statewide significance. RCW 90.58.030(2)(e)(iii).

The very genesis of the SMA was concern for the preservation of navigational values as protected by the public trust doctrine. See Wilbur v. Gallagher, 77 Wn.2d 306, 462 P.2d 232 (1969) (expressly including recreational boating.) As we recently stated in Sperry Ocean Dock v. Tacoma, SHB 89-4, (March 1, 1990), "There is in the Act a built-in pro-navigational bias, serving as the backdrop for all planning and use conflict decisions."

The proposal under review is in aid of navigation. The state-wide interest as expressed in SMA policy is served by allowing

1 this development unless other values protected by the statute are
2 seriously undermined. After careful review of the evidence, we are
3 unable to say that such undermining will occur. The project, as
4 conditioned, is we believe, "consistent with the control of pollution
5 and prevention of damage to the natural environment" and is "dependent
6 upon use of the state's shoreline." RCW 90.58.020. Also, in a
7 limited sense, the moorage itself increases public access to the
8 shoreline. See, DOE v. Ballard Elks, 84 Wn.2d 551, 527 P.2d 1121
9 (1974) (private club as serving public access objectives). Moreover,
10 moorage currently used by Seattle Yacht Club members at the Admiralty
11 Resort Marina and anchoring space in the bay used by such members,
12 will become available to the general boating public.

13 VII

14 Our conclusions under the SMA, presuppose the determination that
15 this project, as conditioned, will not have significant adverse
16 environmental effect. Therefore, we have no occasion to invoke the
17 State Environmental Policy Act substantively, as requested by the
18 intervenors.

19 VIII

20 Likewise, since we conclude that shorelines law consistency has
21 been shown, no independent public trust doctrine issue remains.
22 Caminiti v. Boyle, 107 Wn.2d 662, 732 P.2d 989 (1987).
23
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25

IX

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters the following

ORDER

The decision of Jefferson County denying a shoreline substantial development permit to the Seattle Yacht Club (Permit Application No. SDP 87-0001) is reversed. The matter is remanded to Jefferson County to issue a permit, conditioned as provided in the suggested conditions of its planning staff, with the exception that Conditions No. 3 and No. 6 shall be rewritten as set forth in Finding of Fact XXI above.

DONE this 2nd day of June, 1990.

SHORELINES HEARINGS BOARD

Wick Duford

WICK DUFORD, Presiding

See DISSENT

JUDITH A. BENDOR, Chair

Harold S. Zimmerman

HAROLD S. ZIMMERMAN, Member

Nancy Burnett

NANCY BURNETT, Member

Gordon F. Crandall

GORDON F. CRANDALL, Member

1 DISSENTING OPINION - BENDOR

2 I respectfully dissent.

3 I join my colleagues' opinion in many respects, particularly the
4 emphasis on preserving navigation.¹

5 However, this 20-boat facility is simply too large for its
6 setting. The outstation is to be located in a residential area, one
7 designated suburban under the Jefferson County Shoreline Master
8 Program. The Yacht Club's property has a shoreline frontage of 255
9 feet. The dock structure across the shoreline will cover 215 feet, or
10 85%. On summer weekends the Beckmans' view will be dominated by this
11 facility.

12 In addition, evidence showed that docked boats will release "gray
13 water" when people shower or wash. This water is released untreated,
14 and despite the presence of soap, is contaminated. Moreover, it is
15 unrealistic to assume that during the night, boaters will leave their
16 quarters, walk to the head of the dock, and climb 18 vertical feet of
17 stairs to use the on-shore toilet facilities. If their boats did not
18 have holding tanks, there would be a release of sewage while docked.
19 In addition, there would be an aesthetic impact in the shoreline area
20 from the release of soapy water.

21
22 ¹ In light of this emphasis, the Board's discussion of the private
23 agreement to exclude docks from the inner Harbor Village development
24 (see Finding of Fact XXVIII), is merely a factual statement, and not,
25 by implication, a statement supporting the wisdom of that result.
26 That issue is not before this Board in this proceeding.

27 DISSENT (Bendor)

SHB No. 89-45

(1)

1 In terms of compatibility, the Meydenbauer Bay Yacht Club
2 operation pre-dates the Shoreline Management Act. With its extensive
3 rafting and lack of pump-out facility and toilets, the facility might
4 not get a permit under current laws.

5 The Seattle Yacht Club's 20-boat outstation at this scale is
6 simply not compatible with the surrounding uses, and it is
7 inconsistant with Section 4.202 of the Jefferson County Shoreline
8 Master Program.

9 This Board member believes, however, that the Seattle Yacht Club,
10 so long as it operates the facility, will do its utmost to be a
11 responsible neighbor. To accomplish this, a vigorous education
12 program for its membership about sewage discharge is advisable. Such
13 a program could be a model for the entire boating community.

14
15
16 
17 JUDITH A. BENDOR